

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATE OF AMERICA,)	
)	
v.)	Criminal Action No. 11-243
)	
TIMOTHY D. JOHNSON,)	Judge Cathy Bissoon
)	
Defendant.)	

ORDER

Defendant’s Motion (**Doc. 75**) for return of seized property is **DENIED**. Defendant requests that the firearms identified in his Motion be returned to his “proxy,” so that they may be sold by the proxy to pay off Defendant’s special assessment, thereby lowering his “prison custody classification points.” *See id.* at ¶¶ 6-7, 14. The Court of Appeals for the Third Circuit, however, has rejected a materially similar request, holding that such a transaction would constitute “constructive[] possess[ion]” of firearms by a convicted felon. *See U.S. v. Roberts*, 2009 WL 1132341, *1 (3d Cir. Apr. 28, 2009) (citing and relying on *United States v. Felici*, 208 F.3d 667, 670 (8th Cir. 2000) and *United States v. Howell*, 425 F.3d 971, 977 (11th Cir. 2005)). Although the Government, in compliance with its duty of candor to the Court, has identified non-binding decisions that may be read to support a different conclusion, *see* Govt’s Br. (Doc. 76) at 6, the Court declines to follow those decisions to the extent that they are inconsistent with the Roberts decision, cited *supra*.

Finally, the Court notes that the Government has attached to its briefing two exhibits, the first being a list of seized items that it believes are subject to a destruction order, and the second being a list of items that it believes may lawfully be returned to Defendant. *See* Govt’s Br. at 7-8; *see also id.* at 8 (inviting Defendant to identify designee to accept delivery of property

that may be returned). As to the first list, the Court does not currently have before it a motion for a destruction order, and, as to the second list, Defendant remains free to accept the Government's invitation to return his property as described, if he has not already done so.

IT IS SO ORDERED.

April 8, 2014

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via ECF email notification):

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cc (via First-Class U.S. Mail):

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